IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 12TH FEBRUARY 2007 / 23RD MAGHA 1928

WP(C).No. 4786 of 2007(T)

OS.10/2007 of PRINCIPAL SUB COURT,KOCHI

.....

PETITIONER:

KRISHNAMMA RAGHAVAN
W/O RAGHAVAN
AGED 58, MANAPPURATHY HOUSE
PRESENTLY RESIDING AT AREKULATH HOUSE
BENNY ROAD, KOCHI 6

BY ADV. SRI.G.KRISHNAKUMAR
SRI.B.S.SURAJ KRISHNA
SRI.S.RENJITH

RESPONDENTS:

GEETHA, W/O VENUGOPALAN
AGED 40, SREEVILASAM
CC 23/1862, PALLURUTHY NORTH MURI
RAMESWARAM VILLAGE, KOCHI 6

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 12/02/2007, THE COURT ON 12/02/2007 DELIVERED THE FOLLOWING:

K.P.BALACHANDRAN, J.

- -

W.P.(C)NO.4786 OF 2007

- -

Dated this the 12th day of February 2007

JUDGMENT

The petitioner is the plaintiff in O.S.10/07 on the file of the Sub Court, Kochi. The suit Ext.P1 is based on Ext.P2 pro note and the claim advanced in the suit is for recovery of an amount of Rs.2,45,000/- He moved Ext.P3 application for attachment of an item of immovable property which is stated to be the only item of immovable property owned and possessed by the respondent. The grievance of the petitioner is that the court below ordered emergent notice on Ext.P3 application without ordering conditional attachment of the immovable property despite there being sufficient averments in the affidavit accompanying Ext.P3 as to why conditional attachment of the immovable property belonging to the respondent is to be granted and has made over the case to the additional Sub Court, Kochi where it is submitted there is no sitting for the last several months due to absence of Presiding Officer. The prayer in this writ petition is to direct the respondent to furnish security to the extend of Rs.3,00,000/- and in the meanwhile to pass a

conditional order of attachment before judgment as prayed for in Ext.P3 application. It is not proper for this court to pass such orders under Order 38 Rule 5 C.P.C. in this writ petition warranting further proceedings also being taken here itself.

In the result, I direct the Principal Sub Judge, Kochi to withdraw O.S.10/07 to the file of his court and pass appropriate orders on Ext.P3 application filed under Order 38 Rule 5, positively on 14-2-2007 to which day it is submitted that Ext.P3 application is posted. With this direction this writ petition is disposed of. Petitioner shall produce a copy of this judgment in time in the court below to enable that court to comply with the above directions.

K.P.BALACHANDRAN, JUDGE

jes